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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/020,525	12/14/2001	William G. Massey III	450-59084	9079

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EXAMINER

VAN PELT, BRADLEY J

ART UNIT PAPER NUMBER

3682

DATE MAILED: 02/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/020,525

Applicant(s)

Examiner

Bradley J Van Pelt

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 November 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-45 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-12, 14, 15, 17, 26, 27 and 29-38 is/are allowed.
- 6) ☒ Claim(s) 13, 18-25 and 28 is/are rejected.
- 7) ☒ Claim(s) 16 and 39-45 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 19-21 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The structure of the mounting bracket is not clear. Claim 18 sets forth “the upper end of a pedal support portion is configured to be mounted for vertical movement along the wall of the vehicle to permit adjustment of the vertical position of the upper end portion of the pedal support portion.” Claim 19 sets forth “the mounting bracket being configured to be slidably mounted to the vehicle wall.”

This language is confusing, because it is unclear if the support or mounting bracket corresponds with 70 in the specifications. In the written portion of the specification, 70 is the mounting bracket, thus, only the mounting bracket is able to move vertically relative to the wall; subsequently, the support 22 moves along with the mounting bracket 70. Thus, the support does not have a degree of freedom allowing it to move vertically relative to the wall.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claim 13 is rejected under 35 U.S.C. 102(e) as being anticipated by Rixon et al. (Pub. No. 2002/0053254).

Rixon discloses a segmented pedal support portion having a first upper (126) segment and a second lower segment (122), the upper segment being pivotally coupled to the lower segment to permit pivoting of the lower segment relative the floor of the vehicle; a foot pedal carried by the lower segment of the pedal support portion; and a fore-aft position adjuster (124) carrying the upper segment of the pedal support portion and configured to be mounted to the wall of the vehicle, the fore-aft position adjuster being configured to selectively vary the fore and aft position of the pedal support portion and thereby the pedal relative the wall of the vehicle.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 18-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rixon et al. (USPN 6,314,831) in view of Kenney (USPN 3,943,795).

Rixon et al. disclose an adjustable foot pedal assembly for a vehicle having a driver compartment comprising a wall and a floor (inherent), the pedal assembly comprising: a pedal

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support portion (18) having an upper end portion and a lower end portion; and foot pedal carried by the pedal support portion;

a mounting bracket (14) coupled to the upper end portion of the pedal support portion;

a rotatable screw (22) coupled to and extending outwardly from the mounting bracket and a bracket member (16) threadably engaging the screw, the bracket member being coupled to the upper end portion of the pedal support portion, wherein rotation of the screw in a first direction causes the bracket member to move the pedal support portion and the pedal away from the wall and rotation of the screw in a second direction causes the bracket member to move the pedal portion and the pedal toward the wall.

Rixon et al. do not show the mounting bracket moves vertical relative to the vehicle wall.

Kenney shows a mounting bracket (17) which moves vertical relative to a wall (13).

To modify the apparatus of Rixon et al. so as to include an adjustable mounting bracket would have been obvious to one of ordinary skill in the art at the time the invention was made in view of the teachings of Kenney that such an arrangement improves the range of adjustability.

7. Claims 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herring in view of Lundberg et al. (USPN 5,133,225).

Herring discloses pedal support means (58) for engaging the pedal support surface; a pedal pivotally coupled to the pedal support means and extending generally above the pedal support means, the pedal being operable to be pivoted relative to the pedal support means between a depressed position and an idle position; means (62) for biasing the pedal to the idle position; adjustment means (52) for adjusting the position of the pedal support means and the pedal toward and away from the wall;

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the adjustment means comprises a jack screw (52) configured for mounting to the vehicle wall and a positioner means (upper flange portion of support means 58) threadably engaging the screw and coupled to the pedal support means, wherein rotation of the screw in a first direction causes the positioner means to move the pedal support means and the pedal away from the wall and rotation of the screw in a second direction causes the positioner means to move the pedal support means and the pedal toward the wall.

Herring fails to disclose at least one roller rotatably mounted to the arm member, the roller being positioned for rolling contact along the base when the pedal is pivoted toward and away from the base, the roller coupling the arm member to the base; at least one roller which is rotatably coupled to the lower end portion of the base and positioned for supporting the base on the floor of the vehicle or a rub pad placed on the floor; roller means mounted to the pedal support means and positioned for rolling contact with the pedal assembly support surface when the adjustment means is activated to adjust the position of the pedal support means toward and away from the wall; a rub pad placed on the floor of the vehicle with an upper surface comprising the pedal assembly support surface and the upper surface being in a position to engage the roller means.

Lundberg et al. shows roller means (58) mounted to a pedal support means (38) and positioned for rolling contact with a pedal assembly support surface (64); a rub pad placed (track 64 is rub pad) on the floor of the vehicle with an upper surface comprising the pedal assembly support surface and the upper surface being in a position to engage the roller means.

To modify the apparatus of Herring so as to provide rollers on the arm and base/support would have been obvious to one of ordinary skill in the art at the time the invention was made in

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view of the teachings of Lundberg et al. that such an arrangement decreases the friction force between the floor and the base to ease adjustment of the pedal.

8. Claims 25, 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ristau (USPN 3,288,239) in view of Rixon et al. (USPN 6,314,831).

Ristau discloses a support for supporting a foot pedal in a vehicle driver compartment comprising a wall, a floor and an inclined toe board extending between the wall and the floor, the support comprising: a vertical upper end portion (upper portion of 50 extends vertical see fig. 4) for extending generally parallel to the wall; a horizontal lower end portion (lower portion of 50 extends horizontal) for extending generally parallel to the floor; and an angled intermediate portion (middle portion of 50) extending between the upper end portion and the lower end portion such that the upper end portion, the lower end portion, and the intermediate portion define a shape that generally corresponds to the shape defined by the wall, the floor and the toe board;

the vehicle compartment further comprises a rotatable screw (36) extending from the wall and the upper end portion comprises a threaded bracket (44) configured to engage the screw for adjusting the fore-aft position of the support upon rotation of the screw.

Ristau does not show maintaining the elevation of the support upon rotation of the adjustment screw.

Rixon et al. shows maintaining an elevation of the support upon rotation of an adjustment screw (22).

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To modify the apparatus of Ristau so as to maintain elevation would have been obvious to one of ordinary skill in the art at the time the invention was made in view of the teachings of Rixon et al. that such an arrangement improves adjusting ranges.

Allowable Subject Matter

9. Claims 1-12, 14-15, 17, 26, 27, 29 and 30-38 are allowed.
10. Claims 16 and 39-45 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

11. Applicant's arguments filed 11/3/03 have been fully considered but they are not persuasive.

Regarding claim 13, applicant argues the Rixon et al. reference does not anticipate the lower segment pivots relative to the vehicle floor about a pivot axis extending through the lower and upper segments. However, in the Rixon et al. reference lower segment 122 is allowed to pivot on pin 130 on the upper segment 126 relative to the floor. Also the pedal is pivotally coupled to the lower segment, because it rotates in slot 131. Therefore the Rixon et al. reference anticipates claim 13.

Regarding claims 22-24, applicant argues the combination of Herring in view of Lundberg et al. In Herring, the base 58 is allowed to slide on the floor of the vehicle. To induce the sliding of the base 58, it would be obvious to one of ordinary skill in the art to place a roller on the base 58, as taught by Lundberg et al.; therefore, the combination is proper.

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Applicant's arguments with respect to claim 18-21, 25 and 28 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion


12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bradley J Van Pelt whose telephone number is 703.305.8176.

The examiner can normally be reached on M-Th 7:00-4:30, 2nd F 7:00-3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A Bucci can be reached on 703.308.3668. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

bjvp 

 2/4/04
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